IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1099 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UMAJI M CHODHARY

Versus

BHAKTIRAM ATMARAM

Appearance:

MR HR PRAJAPATI for Petitioner

MR RC DELIWALA for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 09/11/2001

C.A.V. JUDGEMENT

1. Umaji Madhuji Chodhary, petitioner, original plaintiff, has filed this revision application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act (hereinafter referred to as `the Bombay Rent Act') challenging the judgement and decree

dated 16.7.1990 passed by the Appellate Bench of the Small Causes Court at Ahmedabad in Civil Appeal No. 76 of 1986 wherein the learned judge was pleased to allow the appeal and set aside the decree for possession passed by the learned trial judge in H.R.P. Suit No. 3911/1981 and also held that the standard rent of the suit premises is fixed at Rs. 23/- per month inclusive of taxes and the plaintiff is entitled to recover Rs. 35/- from the defendant as claimed in the suit.

FACTS:

2.1 There is a property bearing survey No. 307 and M.C. No. 1822/2 and 1822/3 situated in juna Wadaj (which is hereinafter referred to as `the suit property') which consisted of two rooms admeasuring 9.10 x 14 ft., one kitchen admeasuring 3.8 x 6 ft. and bath room and latrine admeasuring 13.6 x 7.9 ft. It was averred by the plaintiff petitioner herein in the said suit that he has purchased the suit property from Ranchhodlal Tribhovandas Patel and Ramanlal Tribhovandas Patel on 12.12.1977 under registered Sale Deed and the defendant is a tenant on the ground floor in the said house for which he was given attornment notice dated 12.12.1977. It was averred that the defendant is a tenant at a monthly rent of Rs. 23/and he has not paid the rent from 12.12.1977 and he was in arrears of rent and liable to be evicted. It was also stated that the municipal tax is to be borne by the defendant appellant. It was averred that when the plaintiff purchased the suit house, an assurance was given by the defendant to vacate the premises in his possession and therefore the plaintiff had spent Rs. 8,000/- to Rs. 9,000/- for the repairing of the suit premises and thereafter, the plaintiff requested the defendant to vacate the suit premises but he did not vacate the same and therefore the plaintiff is entitled to claim the rent at the rate of Rs. 35/- per month instead of Rs. 23/-. It was further stated that the defendant has obtained suitable accommodation in Gujarat Housing Board situated at Chandkheda, Sabarmati, Ahmedabad and claimed decree for possession under Section 13(1)(L) of the Bombay Rent Control Act and the defendant is liable to be evicted. It was also stated that the defendant was served with a notice dated 24.10.1978 whereby his tenancy was terminated and he was called upon to hand over the possession of the suit premises and to pay rent at the rate of Rs. 35/- per month. But the defendant did not act as per the notice and therefore the suit was filed.

2.2 The defendant-respondent filed his written statement in the suit at Exh. 11 and contended that the

suit is not maintainable at law. It was also contended that the plaintiff had accepted rent from 12.12.1977 to 11.1.1978 but thereafter, the plaintiff asked to increase the rent and did not accept the rent paid by him at the rate of Rs. 23/- per month. The defendant filed standard rent application in the court and therefore the plaintiff gave eviction notice dated 24.10.1978. It was contended that the suit notice was also replied by the defendant on 21.2.1979. It was contended that thereafter the plaintiff filed H.R.P. Suit No. 4597/1978 on the same ground which was dismissed by the court on 30.9.1981 and the defendant was awarded a compensatory cost of Rs. 100/- for the said suit. It was further contended that the present suit is filed on the same ground on which previous suit was filed and therefore the same is not maintainable at law. As regards alternative accommodation, it was contended that the suit premises in Chandkheda is in possession of the eldest son of the defendant who is married and resides there with his wife and children. It was pointed out that the premise in Chandkheda consists only one room and Varanda and therefore it cannot be said to be a suitable residence. It was contended that no cause of action has arisen for the plaintiff to file such suit and ultimately it is prayed that the suit may be dismissed with costs.

2.3 The learned trial judge after recording the oral evidence and after perusing documents by his judgement and decree dated 5.2.1986 was pleased to hold that the plaintiff failed to prove that the defendant is in arrears of rent for more than six years. However, the learned trial judge held that the defendant has obtained suitable accommodation at Chandkheda and that he is the owner of that premises and he is possession of the same. On that ground the learned trial judge ordered and declared that the plaintiff do recover vacant possession of the suit premises from the defendant. The learned trial judge also fixed standard rent at Rs. 23/- inclusive of taxes and also directed that the plaintiff do recover Rs. 35/- from the amount deposited by the defendant in the court and the defendant was given time upto 31.8.1986 to vacate the suit premises.

2.4 Being aggrieved and dissatisfied by the said judgement and decree passed by the learned trial judge, the defendant filed Civil Appeal No. 76 of 1986 before the Appellate Bench of Small Causes Court at Ahmedabad somewhere on 18.3.1986. Before the appellate Bench the defendant also gave an application exh. 18 and in that application the appellant prayed that he may be allowed to produce certain documentary evidence. The application

Exh. 18 given by the appellant-defendant under Order 41 Rules 29 and 27 of the C.P.C. was allowed by the appellate Bench on 17.7.1989. It was stated that the said application has been allowed with the consent of the respondent. In view of this order passed below application Ex. 18, the appellant-defendant not only produced certain documentary evidence in this case but also he adduced oral evidence in this matter. The defendant Bhaktiram Atmaram is examined before the appellate Bench at Exh. 27.

2.5 The appellate Bench of Small Causes Court, Ahmedabad, in Civil Appeal No. 76 of 1996 by its judgement and decree dated 16.7.1990 was pleased to set aside the decree for possession passed by the learned Trial Judge in H.R.P. No. 3911 of 1981 and the plaintiff's prayer for possession in the suit was rejected. The appellate Bench held that the trial judge has erred in holding that the defendant has acquired possession of the premises in question and he has been allowed suitable accommodation. The learned appellate judge held that looking to the strength of the family, it cannot be said that the tenant has acquired alternative accommodation.

2.6 As stated above, the plaintiff landlord has filed this Revision Application before this court challenging the said judgement and decree of the appellate court somewhere on 7.10.1990. During the pendency of the proceedings the petitioner plaintiff had filed Civil Application under Order 41 Rule 27 of the C.P.C. to bring on record subsequent events/additional evidences of the Civil Revision Application. It is submitted that when the applicant had filed the suit the opponent had acquired the premises situated at Gujarat Housing Board, Chandkheda, Ahmedabad. Now during the pendency of the present petition, the opponent-tenant has also acquired another premises situated at Bungalow No. 36, Narsinhnagar Society, Near Panchalnagar, Rampair Tekra, Old Wadaj. The new premises consist of one drawing room, one kitchen, store room, two latrines, bathroom and cellar wherein rooms have been constructed. Therefore, the petitioner-plaintiff placed on record panchnama of the newly acquired premises by the court Commissioner along what map prepared in HRP suit No. 59/1999. The tenant has not filed any reply to this Civil Application

2.7 The plaintiff landlord has filed another application being Civil Application No. 6376 of 1999 for bringing subsequent events on record. Copy of panchnama is placed on record to show that the tenant is not

residing in the suit premises but he is doing business of sarees. The court Commissioner has prepared panchnama in HRP Suit No. 59/99.

2.8 It may be stated that the respondent tenant has filed reply to the said Civil Application No. 6376/1999 and contended that the additional evidence has no bearing on the question and issues involved in the Civil Revision Application. If there is any change of user of the premises, it is entirely a separate and distinct ground and this new ground cannot be raised for the first time in Civil Revision Application. It was stated that the opponent resides in the suit premises and disputed the question of fact regarding user of the premises.

3. Mr. Prajapati, learned counsel for the petitioner submitted that the order of the appellate court dated 16.7.1990 wherein the appeal of the tenant is allowed is clearly illegal and contrary to the facts and evidence on record. He submitted that the appellate court has committed an error in allowing the appeal of the tenant to lead addition evidence under Order 41 Rule 27 of the C.P.C. He submitted that in view of Section 107(1)(d) of the C.P.C. read with Order 41 Rule 22 of the C.P.C. the appellate court has power and jurisdiction to take additional evidence or require such evidence to be taken subject to the conditions laid down in Rule 27 of Order 41 in which the appellate court may admit additional evidence whether oral or documentary. He submitted that the landlord only gave consent for filing the application under Order 41 Rule 27 of the application at Exh. 18 on 17.7.1989. However, the landlord did not give consent for allowing the application on record. It is submitted that it is not the case of the tenant that he desires to bring additional evidence on record but the lower court has improperly refused to admit evidence which ought to have been admitted. It is also not the case of the tenant that such additional evidence was not within his knowledge or could not after exercise of due diligence, be produced by him at that time when the lower court passed the decree. According to him the tenant has failed to establish that with the best efforts such additional evidence could not have been adduced at the first instance. It was submitted that nowhere the appellate court has recorded that the the court requires additional evidence to enable it to pronounce the judgement. It was submitted that the appellate court ought to have considered that the additional evidence sought to be produced by the tenant was very much available to him during the trial and no reasons are

given for not producing the same during the course of trial. The appellate court ought not to have allowed the tenant to produce the additional evidence because the provisions of Rule 27 are not intended to allow a litigant who has been unsuccessful in lower court to patch up the weak parts of his case and to fill in gaps. He relied on the judgement of the Hon'ble Supreme Court in the case of STATE OF U.P. VS. MANBODHAN LAL reported in AIR 1968 SC 406.

3.1 The learned counsel further submitted that the appellate court ought to have decided that it requires additional evidence and not of the litigant. The appellate court ought to have held that additional evidence is required to pronounce the judgement. All the same the appellate court cannot pronounce the judgement in this behalf. He has relied on the judgement in the case of PREMIER AUTOMOBILES VS. KABIRUNISSA reported in AIR 1991 SC 91. In view of the same, he submitted that the tenant has failed to establish that there was compliance of Order 41 Rule 27 of the C.P.C. and therefore the order allowing tenant to produce additional evidence is bad in law and subsequently the judgement and order passed by the learned Trial Judge required to be quashed and set aside on this ground.

3.2 The learned counsel further submitted that the lower appellate court has reversed the judgement on the ground that looking to the strength of the family members and area of the alternative premises acquired by the tenant, it cannot be said that it is suitable to the tenant and his family members. The learned counsel has submitted that looking to the area of both the premises, i.e. suit premises as well as the alternative premises acquired by the tenant, it can be said that the alternative premises is big in area than the area of the suit premises. It was the case of the tenant before the trial court that he has sold out the acquired premises as his son could not find it convenient. However, he could not produce any evidence to show that the said premises was sold out by him. Anyway, he stated that the trial court has come to the conclusion that the tenant has acquired alternative suit premises in this behalf. He therefore submitted that the tenant is not entitled to retain the suit premises and is required to be evicted. He submitted that the appellate court has committed a grave error in holding that the alternative premises acquired by the tenant is not suitable to him.

3.3 The learned counsel for the petitioner further submitted that the landlord filed two Civil Applications

which I have indicated earlier and contended that the tenant has acquired another premises and this fact the court should take into consideration in this behalf. He submitted that in this case provisions of Order 41 Rule 27 of the C.P.C. are clearly applicable as all the events have been taken place only after the decree passed by the appellate court and therefore he is entitled to produce the additional evidence on record. He further submitted that the tenant has acquired alternative premises and the court should pass order in favour of the landlord under Section 13(1)(L) of the Bombay rent Act. In this connection he has pointed out that two Civil Applications which are pending before the court and that the tenant has acquired suitable premises in this behalf. For the proposition the court can either take into consideration subsequent event after decree passed by the trial court. e has relied on the judgement of the Hon'ble Supreme Court in the case of GURUDEV SINGH VS. SURJIT KUMAR ALIAS JIT AND ANOTHER reported in (1996) 9 SCC 219. He has also relied on another decision of the Hon'ble Supreme Court in the case of M. LAXMI & CO. VS. A.R. DESHPANDE reported in AIR 1973 SC 171 and another judgement of this court and another judgement of this court in the case of LEGAL REP. AND HEIRS OF KARSANDAS GORDHANDAS PARMAR VS. BAHADURSINGH MADHURSINGH DODIS reported in 1999(1) GLH 543. He therefore submitted that in the facts and circumstances of the case it is established beyond shadow of doubt that (i) the tenant has acquired another premises much bigger in size than the suit property during the pendency of the revision application other than the acquired property at the time of filing of the suit.

(ii) The tenant is not using the the suit premises for the residential purpose but he was using it for the commercial purposes. He therefore submitted that in view of subsequent event the tenant has acquired another residential accommodation at Narsinhnagar, Bungalow No. 30, Near Panchalnagar, Rampir Tekra, Old Vadaj, Ahmedabad City where the tenant was found residing during the course of panchnama carried out on 8.8.1995 by the Court Commissioner in HRP Suit No. 3897 of 1987 in presence of son of the tenant. This document has been produced before this court by way of Civil Application No. 2245 of 1997 for which the tenant has decided not to file any reply and therefore the say of the petitioner landlord is not denied and in fact to that extent it is not disputed. The learned counsel therefore submitted that comparing the suit premise vis-a-vis the premises acquired by the tenant before filing of the suit as well as during pendency of this revision application, it is more than

clear that the tenant has acquired suitable alternative accommodation and therefore he is not entitle to keep possession of the suit premises. In view of the same, on account of acquiring suitable alternative accommodation, the judgement and decree passed by the lower appellate court is required to be modified and tenant may be directed to evict the suit premises.

3.4 The learned counsel further submitted that during the pendency of the revision application the petitioner came to know that the tenant is carrying on business of sarees in the suit premises instead of residing there. It was submitted that in HRP Suit No. 59 of 1989 between the petitioner and the respondent-tenant before the Small Causes Court at Ahmedabad, a panchnama of the suit premises has been carried out by the Court Commissioner on 19.1.1999 and it has been found that the tenant is doing business of sarees. In view of that it cannot be said that alternative accommodation acquired by the tenant is not suitable to him and his family members. It is submitted that the lower appellate court has reversed the decree passed by the trial court only on the ground of suitability by holding that looking to the strength of the family member of the tenant it cannot be said that the tenant has acquired suitable alternative accommodation. In view of the subsequent events, it cannot be said that the tenant has not acquired suitable alternative accommodation. It is submitted that as on today, no son of the tenant is residing in the suit premises along with their family. All sons have separated and they are having their own residents. Therefore, the suitability part has no more in existence and therefore it cannot be said that the tenant has not acquired suitable alternative accommodation. Therefore, the tenant is required to be evicted from the suit premises.

4. On behalf of the respondent H.M. Dave, learned advocate, argued before me. She contended before me that as regards application under Order 41 Rule 27 of the C.P.C. the tenant produced two documents before the appellate court by way of additional evidence namely, ration card and map of another flat (which was sold out during the pendency of the suit). She contended that when the application under Order 41 Rule 27 was preferred, the present opponent made an endorsement on Exh. 18 and another endorsement on Exh. 19 and thereafter the reply given by the opponent at Exh. 20. Arguments were advanced and thereafter order was passed. Oral evidence was also adduced. The opponent was examined and cross-examined by the advocates of both the

parties. Once the appellant has participated in the very issue, he has got no right to agitate the issue at the revisional stage. The appellant is not entitled to raise this contention. Therefore she submitted that the contentions of the learned counsel for the petitioner that the appellate court has erred in admitting the additional evidence has no force.

4.1 The learned counsel for the respondent further contended that one of the grounds on which the trial court has passed decree of possession was that the tenant has acquired suitable alternative accommodation. The learned counsel submitted that the case of the opponent was that he has acquired one house which is smaller than the suit premises. The learned counsel for the respondent stated that the tenant has produced ration card and map of new premises and the same can be produced in the interest of justice which is a public document. She contended that both these documents which are produced under Order 41 Rule 27 are relevant in view of provisions of Section 13(1)(L) of the Bombay Rent Act. The learned counsel for the respondent further submitted that in the appeal preferred by the opponent, the ration card and may of the new premises had been produced as additional evidence. The learned counsel for the respondent has submitted that there is no irregularity in allowing additional evidence by the appellate court and this court can always appreciate the fact whether the ration card which is a public document is necessary document in pronouncing the judgement or not. She submitted that as regards suitable accommodation, opponent-tenant's case was that he had purchased house for his sons and the sons with 4 family members were residing in that house which was sold out during the pendency of the suit. This premises was not suitable for him. The premises is outside the limit of Ahmedabad Municipal Corporation. He never resided in that premises at any point of time.

CIVIL APPLICATION NO. 2087/1997:

4.1A The tenant has not filed any reply to the said application. However, before me the learned counsel has contended that the petitioner has no right to produce additional evidence in this behalf. She contended that the opponent is residing in the suit premises. Therefore, the contention of acquisition of suitable premises is not tenable. It was contended that no plea is raised in respect of non-user or change of user. Therefore, the plea cannot be taken into consideration by way of additional evidence in revision application.

4.1B The learned counsel contended that the scope of revision is limited. It was submitted that the revisional court cannot take into consideration entirely a new plea. She submitted that the opponent has preferred HRP Suit on the ground of change of user in the court of Small Causes Court. It was submitted that the opponent carries on his business at Maruti Centre and address is given as: 483/4, Nr. Mandir Vas, Veg. Market, New Wadaj, Ahmedabad. It was submitted that the bill book was found and the address in the bill book is also mentioned in the panchnama. It was submitted that the opponent was residing at the suit premises, the panchnama is not a proved document.

4.2 At the time of hearing of this revision application the learned counsel for the petitioner has relied on the judgement in the case of STATE OF U.P. VS. MANBODHAN LAL reported in AIR 1968 SC 406. He submitted that nowhere the appellate court has recorded that the court requires additional evidence to enable them to pronounce the judgement. It is submitted that the appellate court ought to have considered that the additional evidence sought to be produced by the tenant was very much available to him during the trial and no reasons have been given for not producing the same during the course of trial. The appellate court ought not to have allowed the tenant to produce the additional evidence because the provisions of Rule 27 are not intended to allow the litigant who has been unsuccessful in the lower court to patch up the weak parts of this case and fill in gaps.

4.3 The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of M. LAXMI & CO. VS. A.R. DESHPANDE particularly para 27 which reads thus:

> "It is true that the court can take notice of subsequent events. There cases are where the court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the court can take notice of such changes. If the court finds that the judgement of the court cannot be carried into effect because of change of circumstances the court takes notice of the same. If the court finds that the matter is no longer in controversy the court also takes notice

of such events. If the property which is the subject matter of suit is no longer available the court will notice of such event. The court takes notice of subsequent events to shorten litigation, to preserve rights of both the parties and to subserve the ends of justice."

4.4 He has also relied on the judgement of this court in the case of LEGAL REP. AND HEIRS OF KARSANDAS GORDHANDAS PARMAR VS. BAHADURSINGH MADHURSINGH DODIS reported in 1999(1) G.L.H. 543 in which at paragraph 14 the court has observed as under:

"Consideration of subsequent events by the courts is a settled proposition of law. This settled proposition is to the effect that if certain events take place during pendency of the suit the Trial Court can take the same into consideration. Likewise if such events take place during pendency of the appeal the appellate court can look into it and if such events take place during pendency of the revision the revisional court can also consider such subsequent events and can mould and grant relief keeping in view these subsequent events. Amendment of pleadings on account of accrual of subsequent events during pendency of proceedings has also been permitted in view of Apex Court's verdict in Shikar Chand Jain Vs. D.J.P. Karini Sabha, reported in AIR 1974 SC 1178. On subsequent events and considering the same by the courts the Apex Court's verdict in P. Venkateshwarlu V. Motyor and Genetal Traders, reported in AIR 1975 SC 1409, M. Laxmi & Co. Vs. A.R. Deshpande reported in AIR 1973 SC 171, M/s. Variety Emporium Vs. V.R.M. Mohmed Ibrahim reported in A.I.R. 1985 SC 207, Hasmat Rai Vs. Raghunath Prasad reported in AIR 1981 SC 1711 can be referred."

4.5 It is submitted that judging from the subsequent events, namely, the tenant has acquired another premises much bigger in size than the suit property during pendency of the revision other than the acquired property at the time of filing of the suit and the tenant is not using the suit property for the residential purpose but he is using for commercial purpose, two questions arise for consideration.

"(i) Whether the tenant could be evicted from the suit premises on account of acquirement of

alternative accommodation in view of Section 13(1)(i) of the Bombay Rent Act.?

(ii) Whether it can be said that the tenant has acquired suitable alternative accommodation?

4.6 Thereafter it was submitted that in view of the subsequent events, the tenant has acquired another residential accommodation at Narsinhnagar, Bungalow No. 30, near Panchalnagar, Rampir Tekra, Old Vadaj, Ahmedabad City where the tenant was found residing during the course of panchnama carried out on 8.8.1995 by the Court Commissioner in the HRP Suit No. 3897/87 in presence of son of the tenant. The said document has been placed on record of the Revision Application by Civil Application No. 2245 of 1997 for which the tenant has not filed any reply. Thus, it was submitted that the say of the petitioner-landlord is not denied. Therefore, the said document is no more in dispute. Comparing the suit premise vis-a-vis the premises acquired by the tenant before filing of revision application, it is more than clear that the tenant has acquired suitable alternative accommodation and therefore, he is not entitled to keep possession of the suit premise. In view of the same, on account of acquiring suitable alternative accommodation, the judgement and decree passed by the lower appellate court is required to be modified and tenant may be directed to evict the suit premises.

4.7 It was further submitted that the lower appellate court has reversed the judgement and decree passed by the trial court only on the ground of suitability by holding that looking to the strength of the family member of the tenant it cannot be said that the tenant has acquired suitable alternative accommodation. In view of the subsequent events, it cannot be said that the tenant has not acquired suitable alternative accommodation. It is submitted that as on today, no son of the tenant is residing in the suit premises along with their family.

4.8 It is submitted that the lower appellate court has reversed the judgement and decree passed by the trial court on the ground that looking to the strength of the family members and area of the alternative premises acquired by the tenant, it cannot be said that it is suitable to the tenant and his family members. It is submitted that looking to the area of both premises i.e. suit premises as well as the alternative premises acquired by the tenant, it can be said that the alternative premises is big in area than the area of the suit premises. It was the case of the tenant before the

trial court that he has sold out the acquired premises as his son could not find it convenient. However, he could not produce any evidence to show that the said premises was sold out by him. Anyway the law on the subject is settled that once the tenant acquires alternative accommodation, if he sells out, that does not give him right to retain the rented premises on the ground that he is no more in possession of the acquired premises. Nowhere the tenant has stated before the trial court that the alternative premises is not suitable to him and his family members. It was only stated that it was not convenient to his son as it was very far from the city. The same has been disbelieved by the trial court. Therefore, the tenant is not entitled to retain the suit premises and is required to be evicted. It was submitted that the lower appellate court has committed grave error in holding that the alternative premises acquired by the tenant is not suitable to him. In view of the same, the judgement and decree passed by the lower appellate court is required to be set aside and that of the trial court be affirmed.

4.9 The learned counsel has also relied on decision of this court in the case of SHANTABEN N. DALVADI VS. VADILAL KACHARABHAI PRAJAPATI reported in 2000(1)GLH 362 in which on page 366 at para 5.4 the court observed as under:-

> "Thus, once it is found that the original tenant, his wife and at least some of his sons were living together as a family unit and messing together, then the acquisition of suitable residential accommodation by the wife would be considered to be acquisition of suitable residential occupation by the husband-tenant."

4.10 On the other hand the learned counsel for the respondent has tried to support the judgement of the appellate court in this behalf. The opponent's case is that he has acquired one house which is smaller than the suit premises for no children four members of his family are residing at new house. The learned counsel for the respondent has submitted that in the appeal preferred by the opponent, ration card and map of new premises had been produced as additional evidence. The appellant has given consent to allow the document in respect of map and thereafter arguments advanced. Ration car is a public document. It is required to produce in the interest of justice. It is essential to put on record in deciding whether the tenant having acquired suitable residence in view of provisions of Section 13(1)(L) of the Bombay Rent

Act.

4.11 He submitted that the acquired premises is not suitable accommodation and he had purchased a house for his sons and 4 family which was sold out during the pendency of the suit as this premise was not suitable for him.

4.12 I have considered the rival submissions made by the learned counsel for the petitioner and according to him the said submissions are well founded and same are supported by various authorities in this behalf. In my view before the Lower Court the tenant did give an application under Order 41 Rule 27 of the C.P.C. and the landlord gave consent for filing the application but the landlord did not give consent for allowing the said application. He submitted that the Lower Court has not properly considered the principle of Order 41 Rule 27 of the C.P.C. while allowing the application of the tenant. In my view the Lower Court has erred in reversing the judgement of the Trial Court on the ground that looking to the strength of family and the alternative premises acquired by the tenant, it cannot be said that it is suitable to the tenant and his family members. In my view the appellate court has committed a grave error in holding that the alternative premises is not suitable to tenant.

4.13 In my view the landlord was right in filing Civil Application for additional evidence. In my view, the court is perfectly justified in allowing the said application on the principle laid down under Order 41 Rule 27 of the C.P.C. In my view the court from whose decree the revision is preferred, the parties seeking to produce additional evidence, namely the petitioner in this behalf establishes that notwithstanding the exercise of due diligence, the evidence sought to be tendered at the revision was not within the knowledge as the events which have produced by the petitioner are subsequent to the appellate order in this behalf. The petitioner had filed this application only to show that the tenant has acquired suitable premises after the date of the appellate court's order and therefore the landlord was justified in filing the Civil Application for producing the said evidence on record. The landlord has also filed this application to show that the tenant is not residing but he carries on business of sarees in the premises. He has produced panchnama dated 19.1.1999 which is after the date of decree . In view of the same, the landlord has been able to establish that the tenant has acquired alternative suitable premises and therefore the

petitioner-landlord is entitled to decree for the possession of the suit premises.

In my view the appellate court has committed error of law and therefore the revision application is allowed. The judgement and decree of the appellate court is set aside and that of the trial court is restored. No order as to costs.

(K.M. MEHTA, J)